

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA
SOUTHEASTERN DIVISION

David Pankowski,)	
)	
Petitioner,)	Case No. 3:11-cv-34
)	
-vs-)	ORDER ADOPTING REPORT AND
)	RECOMMENDATIONS
Don Redmann,)	
)	
Respondent.)	

The Court has received a Report and Recommendation from the Honorable Karen K. Klein, United States Magistrate Judge, pursuant to 28 U.S.C. § 636, recommending that David Pankowski's petition for habeas relief be dismissed with prejudice (Doc. #5). Pankowski timely filed objections to the Report and Recommendation (Doc. #6).

In response to the Report and Recommendation, Pankowski maintains the state court's decision regarding his Fourth Amendment claim is contrary to federal law and involves an unreasonable application of clearly established federal law (Doc. #6). Pankowski reiterates that the deputy that stopped his vehicle did not have reasonable and articulable suspicion to justify the stop.

After considering the Report and Recommendation, conducting a *de novo* review of Pankowski's objections, and reviewing the entire file, the Court finds the Magistrate Judge's position is correct. Accordingly, the Court hereby adopts the Report and Recommendation in its entirety. For the reasons set forth therein, Pankowski's petition under 28 U.S.C. § 2254 is hereby **DISMISSED with prejudice**.

APPEAL IN FORMA PAUPERIS AND CERTIFICATE OF APPEALABILITY

The Court hereby certifies that an appeal from the dismissal of this action may not be

taken *in forma pauperis* because such an appeal would be frivolous and cannot be taken in good faith. See 28 U.S.C. § 1915(a)(3); Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

The Court also finds that Pankowski has failed to make a substantial showing of the denial of a constitutional right, and the issues presented in this case are inadequate to deserve further consideration. See Miller-El v. Cockrell, 537 U.S. 322, 327 (2003). Therefore, the Court will not issue a certificate of appealability. If Pankowski desires further review of his petition, he may request the issuance of a certificate of appealability by a circuit judge of the Eighth Circuit Court of Appeals in accordance with Tiedeman v. Benson, 122 F.3d 518, 520-22 (8th Cir. 1997).

IT IS SO ORDERED.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 3rd day of May, 2011.

/s/ Ralph R. Erickson
Ralph R. Erickson, Chief Judge
United States District Court